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Douglas M. Whatley

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

ENRIQUE TAVAREZ LOZA and
LAURA LOZA,

Debtors.

CASE NO. 12-22354-C-7

D.C. NO. BHS-3

**MOTION TO SELL ESTATE'S
INTEREST IN REAL
PROPERTY**

DATE: May 7, 2013
TIME: 9:30 a.m.
DEPT: C; COURTROOM 35
Hon. Christopher M. Klein

Douglas M. Whatley, duly appointed Chapter 7 Trustee in the above-captioned matter, through his counsel, Barry H. Spitzer, moves this Court for authority to sell the estate's interest in real property commonly known as: 2800 N. 40th Street, McAllen, Texas 78501 (hereafter the "Subject Property") with existing liens and property taxes being paid by the estate through escrow for \$50,875.00 "as-is" and "where-is" with no warranties or guarantees. The Subject Property is a single-family residence. In support of his Motion, the Trustee states the following:

1. That the Debtors filed a Chapter 7 petition on February 6, 2012 and Douglas M. Whatley (hereafter the "Trustee") was appointed as successor Trustee that day.

2. That the Debtor is the legal owner of the Subject Property, which is now property of the estate. The sister of the Debtor, Flor Espinosa, has been residing in the Subject Property since it was purchased by the Debtor. Ms. Espinosa now wishes to

1 purchase the Subject Property. The Debtors initially claimed an exemption in the equity
2 of the Subject Property, but filed an amended Schedule C on March 19, 2013 which
3 deleted any exemption in the Subject Property. The Debtors have approximately
4 \$15,600.00 in unused wildcard exemption that they are foregoing to allow Ms. Espinosa
5 to purchase the Subject Property at an amount less than fair market value. If any party
6 other than Ms. Espinosa purchases the Subject Property, that party will need to pay
7 \$15,600.00 more than Ms. Espinosa since the Debtors will assert their unused wildcard
8 exemption. The Trustee believes fair market value of the Subject Property is
9 approximately \$66,475.00.

10 3. That the Trustee is aware of a lien in favor of Bank of America Home Loans
11 on the Subject Property in the approximate amount of \$23,315.00 that the Trustee wishes
12 to pay through escrow. The Trustee wishes to sell the estate's interest in the Subject
13 Property "as-is" and "where-is" with no warranties or guarantees to Flor Espinosa
14 (hereinafter "the Buyer") for \$50,875.00. A copy of the Sales Agreement is Exhibit "A."
15 The Buyer has placed a \$2,000.00 deposit with the Trustee, which is non-refundable upon
16 Court approval. The Trustee believes it is in the best interest of the estate to sell the
17 estate's interest in the Subject Property to the Buyer for \$50,875.00.

18 4. The Trustee requests that the Court only approve overbids presented at the
19 hearing that meet the following criteria:

20 (a) Overbidding shall start at \$66,975.00, since if any party other than Ms.
21 Espinosa purchases the Subject Property, that party will need to pay \$15,600.00 more than
22 Ms. Espinosa as the Debtors will assert their unused wildcard exemption (\$50,875.00 plus
23 \$15,600.00 plus \$500.00 overbid). The overbids shall be in minimum \$500.00 increments.

24 (b) To qualify as a bidder, the bidder must bring to the Court (or if
25 appearing via telephone, deliver to the Trustee or his attorney prior to the hearing) a
26 Cashier's Check or a certified check for \$18,100.00. This Cashier's or certified check shall
27 serve as a non-refundable deposit if the overbid is successful.

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2 (c) The successful overbidder must deliver to the Trustee a Cashier's or
3 certified check for the overbid amount within 48 hours of Court approval of the sale.

4 (d) Escrow to close within thirty (30) days of Court approval.

5 5. The Trustee seeks authority to execute any and all additional conveyances,
6 assignments, schedules and other documents as may be necessary to consummate this
7 sale. The Trustee seeks specific authority to pay through escrow Bank of America Home
8 Loans for a secured lien on the Subject Property. The Trustee also seeks specific
9 authority to pay the Court-approved Realtor, Robert R. Guerra, III a commission of 5% of
10 the sales price.

11 6. The Trustee further seeks a waiver of the fourteen day waiting period
12 imposed by Federal Rule of Bankruptcy Procedure, Rule 6004(h).

13 WHEREFORE, Douglas M. Whatley respectfully requests he be authorized to sell
14 the estate's interest in 2800 N. 40th Street, McAllen, Texas 78501 (hereafter the "Subject
15 Property") with existing liens and property taxes being paid by the estate through escrow
16 for \$50,875.00 "as-is" and "where-is" with no warranties or guarantees; specific authority
17 to pay through escrow Bank of America Home Loans for a secured lien on the Subject
18 Property; specific authority to pay the Court-approved Realtor, Robert R. Guerra, III a
19 commission of 5% of the sales price and authority to execute any and all additional
20 conveyances, assignments, schedules and other documents as may be necessary to
21 consummate this sale. The Trustee further seeks a waiver of the fourteen day waiting
22 period imposed by Federal Rule of Bankruptcy Procedure, Rule 6004(h).

23 Respectfully submitted,

24 DATED: April 16, 2013

LAW OFFICE OF BARRY H. SPITZER

25 By: /S/ BARRY H. SPITZER_____
26 BARRY H. SPITZER
27 Attorneys for Douglas M. Whatley,
28 Chapter 7 Trustee

1 I have read the foregoing and agree to the terms and conditions.

2
3 Date: April 16, 2013 /S/ Enrique Tavarez Loza_____
Enrique Tavarez Loza

4 Date: April 16, 2013 /S/ Laura Loza_____
5 Laura Loza

6
7 Approved as to form.

8
9 Date: April 16, 2013 /S/ W. Austin Cooper_____
10 W. Austin Cooper, Esq.

11 **VERIFICATION**

12 I, Douglas M. Whatley, hereby declare:

13 1. I am the duly appointed Trustee in the above-entitled estate.

14 2. I have personal knowledge of the facts stated herein and if called as a
15 witness, I could and would testify competently thereto.

16 3. I believe it is in the best interest of the estate to sell the estate's interest in
17 2800 N. 40th Street, McAllen, Texas 78501 with existing liens and property taxes being
18 paid by the estate through escrow for \$50,875.00 "as-is" and "where-is" with no
19 warranties or guarantees. The proposed purchase price is the highest value the
20 property will bring the estate. The sale will allow for the orderly liquidation of the estate.

21
22 I declare under penalty of perjury under the laws of the State of California that
23 the foregoing is true and correct and that this Declaration is executed on April 10, 2013
24 at Folsom, California.

25 /S/ Douglas M. Whatley_____
26 Douglas M. Whatley, Trustee